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ABSTRACT

Title IX of the Education Amendments of 1972 is the principal federal law which prohibits sex discriminaton in education. This monograph sets forth the extent of Title IX's coverage by subject area, describes the obligations of covered institutions, and explains how victims of discrimination can enforce their Title IX right. While dealing with legal issues, the discussion is not designed to be a technical, legal one. Subjects covered include: (1) sex discrimination in admissions to educational institutions; (2) discrimination on the basis of pregnancy and marital status; (3) employment discrimination; (4) Title IX and sports; (5) sexual harassment in educational institutions; (6) student services; (7) Title IX in vocational education; (8) Title IX enforcement; and (9) affirmative action. (JD)

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Title IX:

A Practical Guide to Achieving Sex Equity in Education

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National Coalition for Women and Girls in Education

TITLE IX: A PRACTICAL GUIDE TO ACHIEVING SEX EQUITY IN EDUCATION

National Coalition for Women and Girls in Education

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November, 1988

PREFACE

With the passage of the Civil Rights Restoration Act over President Reagan's veto on March 22, 1988, Title IX is back as a powerful tool to fight sex discrimination in all aspects of education. Its scope had been severely curtailed by the Supreme Court's devastating 1984 decision in *Grove City College v. Bell* with the result that for four years there were no effective remedies for a wide variety of sex-discriminatory practices in education.

The National Coalition for Women and Girls in Education, which represents over 60 diverse national organizations committed to expanding equity for girls and women in all aspects of education, is extremely pleased to present this "re-introduction" to Title IX. Our hope is that *Title IX: A Practical Guide to Achieving Sex Equity in Education* will reacquaint all of us with the broad scope of Title IX's prohibition against sex discrimination in education and set forth in practical terms the information that girls and women need to know in order to assert and vindicate their rights.

Title IX: A Practical Guide to Achieving Sex Equity in Education was prepared by the Coalition's Task Force on Enforcement including the following members, with their organizational affiliations:

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INTRODUCTION TO TITLE IX

Title IX of the Education Amendments of 1972 is the principle federal law which prohibits sex discrimination in education. It provides:

> *[n]o person in the United States, shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.*

Title IX protects students, faculty and staff. It applies institution-wide to all educational institutions and systems of education which receive any federal financial assistance -- the vast majority of primary and secondary schools, colleges and universities, and programs for vocational and professional education in the country. Title IX's prohibition against sex discrimination also applies to education programs run by non-educational institutions which receive any federal funds. Examples of this coverage include education programs in correctional institutions, health care institutions, unions, or businesses of any type which receive federal financial assistance. The term "covered institution," which is used extensively in the following discussion, includes this full range of educational institutions, systems of education, and educational programs in non-educational institutions.

Title IX's broad coverage is guaranteed by the Civil Rights Restoration Act, passed by Congress on March 22, 1988, over President Reagan's veto. The Civil Rights Restoration Act directly reversed the Supreme Court's decision in *Grove City College v. Bell*, which had limited Title IX's coverage to the specific programs or activities, within broader institutions, which actually received federal funds. With the *Grove City* notion of "program specifity" clearly rejected by the Congress, Title IX prohibits sex discrimination in nearly all aspects of education in this country.

There are, however, certain exceptions to Title IX's coverage. For example, it does not apply to admissions practices in elementary or secondary schools or private undergraduate institutions, to social fraternities or sororities, or to voluntary youth service organizations such as the YMCA, YWCA, Boy Scouts or Girl Scouts. In addition, a covered institution actually controlled by a religious organization may seek an exemption from a particular requirement of the law insofar as application of Title IX in that respect would not be consistent with a specific tenet of such religious organization.

The following sections set forth the extent of Title IX's coverage by subject area, describe the obligations of covered institutions, and explain how a victim of discrimination can enforce her or his Title IX rights. While dealing with legal issues, the discussion is not designed to be a technical, legal one. Readers interested in more detailed information may contact the members of the Coalition's Enforcement Task Force listed in the preface.

SEX DISCRIMINATION IN ADMISSIONS TO EDUCATIONAL INSTITUTIONS

Title IX prohibits sex discrimination in admissions to certain, but not all, covered institutions. It applies to:

- o institutions of vocational education;
- o institutions of professional education;
- o institutions of graduate higher education; and
- o public institutions of undergraduate higher education other than those which, since their inception, have a tradition of admitting only students of one sex.

Title IX does not apply to the admissions practices of any other educational institutions, including:

- o public and private primary and secondary schools;
- o private institutions of higher education; and
- o educational institutions whose primary purpose is the training of individuals for a military service of the United States or for the Merchant Marine.

The legislative history of Title IX shows that the primary/secondary school exclusion was not designed to condone discrimination in such schools but, instead, reflected Congress' view that it had insufficient information on admissions policies at the elementary and secondary level to formulate a policy. The other exclusions, however, do represent a legislative judgment not to prohibit single-sex institutions. Nonetheless, it is important to note that schools exempt from Title IX's admissions requirements are by no means exempt from the obligation to treat students in a nondiscriminatory fashion in all other respects.

The Title IX regulations spell out prohibited admissions practices by covered institutions. In addition to the general prohibition, these institutions may not:

- o prefer applicants of one sex by ranking applicants separately by sex;
- o apply numerical limitations upon the number or proportion of persons of either sex who may be admitted;
- o use tests which have a disproportionately adverse impact on the basis of sex unless: (a) the test is shown to validly predict success in the program or activity in question and (b) alternative tests or criteria without a disproportionately adverse impact are unavailable;

- o treat male and female applicants differently based on their actual or potential parental, family or marital status;
- o discriminate on the basis of pregnancy, childbirth, termination of pregnancy or recovery therefrom, or disabilities related to these conditions;
- o make preadmission inquiries as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs."; or
- o discriminate on the basis of sex in the recruitment of students, including recruiting primarily or exclusively at institutions which have students predominantly or exclusively of one sex if such practices lead to discrimination.

DISCRIMINATION ON THE BASIS OF PREGNANCY AND MARITAL STATUS

The Title IX regulations expressly prohibit discrimination by covered institutions against both students and employees on the basis of pregnancy and parental or marital status. This prohibition applies to all aspects of the institutions' programs, including access to classes and activities, leave policies and health coverage.

The one exception, enacted as part of the Civil Rights Restoration Act, is that covered institutions are not required to provide health coverage for abortions, although they are perfectly free to choose to do so. They are required to cover treatment for complications arising from abortions as they would cover any other medical condition and are prohibited from discriminating against students and employees on the basis that they are seeking or have received a legal abortion.

Access to Educational Programs

Schools must provide equal access to classes and extracurricular activities to male and female students who are married, parents, and/or expectant parents. More specifically:

- Schools may require a physician's certification of the emotional and physical capacity of a pregnant student to continue to participate in the normal school program **only** if such certification is required of students for all other emotional or physical conditions requiring the attention of a physician.
- A school may not exclude or segregate a pregnant student from its normal educational program **unless** the student voluntarily requests participation in the separate program.
- If a school provides a separate voluntary program for pregnant students, it **must** ensure that the instruction provided is comparable to that offered non-pregnant students.

Maternity Leave Policies

Covered institutions must provide students and employees with appropriate leaves of absence for pregnancy and related conditions. If a school does not have a leave policy for students or if a student does not otherwise qualify for such leave, the school must treat pregnancy and related conditions as grounds for a leave of absence for as long as leave is medically necessary as determined by a physician. Similarly, even if a covered institution has no employee leave policy or if an employee does not qualify for leave under such a policy, the institution is required to treat pregnancy and related conditions as a justification for a leave of absence without pay for a reasonable period of time. At the conclusion of such leave, the employee is entitled to return to the position previously held or to a comparable position, without decrease in compensation or a loss of any employment-related rights or privileges.

Health Services

Title IX's prohibition against discrimination on the basis of pregnancy or parental or marital status extends to the full range of health services, including insurance programs, offered to students and employees by covered institutions. The only exception is abortion, which, as discussed earlier, is not a required service. However, coverage must be provided for complications arising from abortions and discrimination against anyone on the basis that they have had an abortion, have provided or advocated abortions, or have had any other involvement with the issue of abortion, is prohibited.

For both students and employees, the Title IX regulations prohibit discrimination on the basis of sex, including pregnancy, in any medical, hospital or accident service, policy or plan. The regulations specifically require that pregnancy be treated in the same way as any other sickness or temporary disability.

Two additional provisions apply to students. First, the regulations permit the provision of services which are used differentially by students of different sexes. An example of a service often used differently by male and female students is family planning.

Second, the regulations require that any covered institution which provides full coverage health service must also provide gynecological care for its students. That is, as long as the health service meets the routine health care needs of its students, it must meet the gynecological needs of its female students. Further, access to gynecological services must be comparable to access to other health services. There should be no special charges for these services and female students cannot be required to wait weeks or months before getting an appointment with a gynecologist, while students needing an orthopedic or surgical consultation are routinely accommodated on a much faster timetable.

Health Insurance

Title IX's protection against discrimination on the basis of pregnancy or marital or parental status in the area of health services extends beyond health services directly provided by an educational institution to include insurance plans they offer. Common restrictions on insurance coverage which may be in violation of Title IX, depending on other coverage offered by the plan, include:

- o exclusion from coverage of normal childbirth and delivery;
- o exclusion from coverage of any aspect of pregnancy or childbirth, or complications arising from such conditions;
- o an arbitrary limit on maximum reimbursement for conditions which affect only women or a limit on reimbursement for such conditions which is lower than the maximum payment for other services and procedures; and
- o a requirement that an extra premium be paid in order to purchase coverage for pregnancy or gynecological services.

EMPLOYMENT DISCRIMINATION

In 1982 in *North Haven v. Bell*, the United States Supreme Court affirmed that Title IX protects employees of covered institutions as well as students. Title IX thus provides a means to attack employment discrimination in covered institutions in addition to those provided by two other federal statutes which also prohibit sex discrimination in employment, Title VII of the 1964 Civil Rights Act, and the 1963 Equal Pay Act. Title IX also complements Executive Order 11246 which prohibits discrimination by institutions receiving federal contracts, a category including most major universities in this country. Indeed, Title IX provides important coverage and protections which should be kept in mind when considering strategies to fight gender-based employment discrimination by covered institutions.

Statistics demonstrate that gender-based employment discrimination is a significant problem in education. Women continue to be seriously underrepresented in the higher-status and higher-paying educational employment categories. In 1986-87 women were 70% of classroom teachers but only 24% of principals and 4% of school superintendents. In higher education in 1987-88, male professors earned an average of $48,060 compared to females' $42,380; male associate professors earned $35,960 compared to females' $33,300, and male lecturers earned $27,240 to females' $23,730. Further, women grow scarcer as one escalates the tenure ranks in higher education. Only 12% of full professors, 25% of associate professors, and 38% of assistant professors are female. However, 53% of instructors are female as are 50% of lecturers.

Title IX's employment protections include the following:

- **Hiring, promotions, layoffs, rehiring**: Employment criteria that disproportionately affect one sex are not permitted unless they can be shown to directly predict success on the job and alternatives which do not have a disproportionately adverse effect do not exist. Further, employers may not discriminate on the basis of pregnancy, childbirth, termination of pregnancy, or parental or marital status in making employment decisions.

- **Recruitment**: Employers may not discriminate on the basis of sex in recruitment, and must actively seek applicants of one sex if a history of discrimination against that sex exists.

- **Job assignments and classifications**: Employers are prohibited from identifying a job classification as either male or female, and may not establish separate lines of progression or tenure based on sex unless sex is a bona fide occupational qualification for the job. In other words, the only type of job which may be limited to members of one sex is one for which sex is a legitimate criteria. An example of this extremely limited class of jobs is a lockerroom attendant. Even so, a male attendant may not be paid more than a female one.

- **Benefits, including leave**: Employers are prohibited from discriminating in the provision of fringe benefits, including medical, accident, hospital, life insurance, profit-sharing, bonus, or retirement plans, or in any leave they offer. Retirement plans must provide for equal contributions and periodic benefits for members of each sex as well as for the same retirement ages for men and women. According to the Title IX regulations, even employers who do not offer other leave are required to provide a "reasonable period of time" off without pay for pregnancy, childbirth, or resulting complications. Employees who have exhausted their normal leave are also entitled to such unpaid leave, which may not result in loss of job status or promotional opportunity.

- **Compensation**: Employers are prohibited from making distinctions on the basis of sex in rates of pay or other compensation or from making or enforcing any policy or practice which results in the payment of higher wages to members of one sex for work on jobs where performance requires equal skill, effort and responsibility and which are performed under similar working conditions.

Coordination with Other Civil Rights Laws

In 1983, the Department of Education entered into an agreement with the Equal Employment Opportunity Commission, which enforces Title VII, regarding the coordination of administrative employment discrimination complaints. Under that agreement, individual Title IX employment complaints are first forwarded to the EEOC for processing where they are treated as Title VII or Equal Pay Act complaints. If conciliation fails, the EEOC will consider litigation or refer the complaint back to the Department of Education for further action, including administrative enforcement procedures. Complaints that allege a "pattern and practice" of discrimination against more than one employee or discrimination against both students and staff are retained at the Department of Education and pursued under Title IX requirements.[1]

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[1] Similarly, the Department of Labor's Office of Federal Contract Compliance Programs, which enforces Executive Order 11246, sends individual employment discrimination complaints to the EEOC but pursues "pattern and practice" or "class" complaints.

TITLE IX AND SPORTS

Discrimination in Physical Education Programs

Physical education is an integral part of the curriculum of a school. Indeed, the playgrounds, courts and fields of our schools are essential parts of the educational environment. Title IX's prohibitions against sex discrimination apply as strongly to physical education programs as to other undertakings of covered institutions.

The Title IX regulations provide that physical education programs must be provided on a coeducational basis. Female and male students have an opportunity in coeducational physical education classes to play and learn together, and a more informal setting provides them the chance to know one another as friends and teammates. The give and take as a team member is excellent training for future work in a group situation. There are, however, the following exceptions to the basic rule:

- Grouping of students in physical education classes and activities by ability is not prohibited when assessment is by objective standards of individual performance which have been developed and are applied without regard to sex. However, if the use of such a standard has an adverse effect on members of one sex, the recipient is required to use appropriate standards which do not have such effect.

- Students may be separated by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports, the purpose or major activity of which involves bodily contact.

- Students whose religion prohibits coeducational physical education may be excused from such classes or be offered physical education on a sex-segregated basis.

Discrimination in Competitive Athletics

In addition to prohibiting sex discrimination in physical education programs, Title IX also prohibits discrimination on the basis of sex in interscholastic, intercollegiate, club, or intramural athletics programs offered by covered institutions. Although female participation in athletics has greatly expanded since Title IX was enacted in 1972, girls and young women are still only about one-third of the participants in high school and college athletics and receive substantially less than that as their share of resources and expenditures. Gender discrimination in athletics persists as a serious problem nationwide.

The Title IX regulations require that covered institutions provide equal opportunity in athletic programs for members of both sexes. Unlike the regulations regarding physical education, there is no general prohibition against providing separate teams for female and male students. Indeed, the regulations permit institutions to offer separate teams where: (1) the selection for teams is based on competitive skill; or (2) the sport involved is a contact sport (boxing, wrestling, rugby, ice hockey, football, basketball or other sports the purpose or major activity of which involves bodily contact). Nonetheless, the regulations make it clear that if an institution offers a team in a given sport, other than a contact sport, for members of one sex only and opportunities for members of the excluded sex have been limited, members of the excluded sex must be allowed to try out for the team. In other words, if a high school offers a track team only for boys, girls must be allowed to

try out for it since their opportunities in athletics have been limited. The opposite is most likely not true since boys have not had limited opportunities in athletics.

Guidelines published by the Department of Health, Education and Welfare (the redecessor agency to the Department of Education) in 1979 which remain in effect go further. For both contact and non-contact sports they require that institutions which sponsor a team for one sex in a given sport must sponsor the same team for members of the other sex if: (1) opportunities for the excluded sex have been limited and (2) there is sufficient interest and ability among members of the excluded sex to sustain a viable team and there is a reasonable expectation of competition for that team. Persons interested in creating a separate team in non-contact sports must also show that members of the excluded sex are not sufficiently skilled to be selected for a single integrated team or to compete actively on such a team if selected. For example, if a school offers only a male ice-hockey team, it must create a female team if there is sufficient interest and ability to field a team and there is available competition. Going back to the example of a school offering only a male track team, it would still have to offer a female team unless the interested women were all skilled enough to make the male team and actually actively compete on that team.

The concept of "equal opportunity" in athletics is not precisely defined by the regulations. They do require, however, that the following factors, among others, should be considered in making the determination of whether equal opportunity exists:

1) whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

2) the provision of equipment and supplies;

3) scheduling of games and practice time;

4) travel and per diem allowance;

5) opportunity to receive coaching [2] and academic tutoring;

6) assignment and compensation of coaches and tutors;

7) provision of locker rooms, practice and competitive facilities;

8) provision of medical and training facilities and services;

9) provision of housing and dining facilities and services; and

10) publicity.

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[2] It is important to keep in mind that employment discrimination against female coaches can result in the discriminatorily reduced treatment of the female-student athletes. This would be in violation of the requirement that female athletes have an equal opportunity to receive coaching.

The regulations provide that unequal aggregate expenditures on men and women will not necessarily constitute non-compliance with the equal opportunity requirement, i.e. there is no absolute requirement of equal expenditures. However, failure to provide necessary funds for women's athletic programs may be considered in making the determination of whether there is equal opportunity. As already discussed, many athletic program are marked by a widespread disparity in the treatment of and expenditures on male and female athletes. These expenditure differentials are properly considered in determining whether discrimination exists.

Title IX's regulations also prohibit sex-discrimination in the granting of athletic scholarships. Covered institutions which award athletic scholarships or grants-in-aid must provide awards to male and female student-athletes in proportion to their participation rate in the athletic program. If female-athletes are one-third of the participants (the national average) they should therefore receive approximately one-third of the athletic scholarship funds. Further, at least one court has held that schools cannot use discriminatorily reduced participation rates to justify unequal scholarship awards. Thus, if only 30% of a school's athletes are female because the women do not have an equal opportunity to participate, a 30% scholarship award rate could well constitute non-compliance with Title IX even though it is technically proportional to the participation rate.

SEXUAL HARASSMENT IN EDUCATIONAL INSTITUTIONS

Sexual harassment, including that found in educational settings, has long been characterized as a "hidden problem." It is only in the last decade that social and legal perceptions of the issue have begun to change so that what was once viewed as harmless flirtation is now illegal under federal gender discrimination laws. In particular, the Supreme Court's 1986 recognition of sexual harassment as a form of sex discrimination in the case, *Meritor Savings Bank v. Vinson*, has brought increased attention to the issue.

Sexual harassment is a problem at all educational levels. Studies at various universities confirm that it is a widespread problem. Certain studies have found that as many as one out of every four female students surveyed had been sexually harassed by a male teacher. A Harvard University study found 32% of tenured female faculty had experienced pressure for sexual favors by a superior and that 49% of nontenured women faculty members experienced some form of harassment.

What is Sexual Harassment?

There are two basic types of sexual harassment, both of which violate Title IX's requirements. The first type is characterized by the imposition of **unwelcome** sexual activity in a relationship of **unequal power**. Examples of this type of harassment include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in an educational activity or (2) submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual.

The second type of harassment occurs where harassment creates a hostile, intimidating, or offensive academic or work environment and those in a position of authority do not redress the problem. This type of harassment overlaps with the first type of sexual harassment and could potentially also include harassment of colleagues by colleagues, students by students, and teachers by students. In establishing an offensive environment claim, it is not necessary for the victim to show that her employment or academic status was adversely affected.

Examples of actions which may constitute sexual harassment under either analysis include:

- unnecessary patting, pinching, or brushing against a person's body;
- deliberate assaults or molestations;
- demanding or suggesting sexual favors accompanied either by implied threats or by promise of preferential treatment;
- a pattern of behavior which includes comments of a sexual nature, sexual jokes, or sexually explicit statements which are not legitimately related to the subject matter of an academic course or activity.

Consensual Relationships

As part of a growing trend, universities and professional organizations such as the American Association of University Professors are adopting ethical standards which forbid any amorous relationships between faculty and students as a breach of professional responsibility by a professor or teaching assistant.

The Law and Institutional Liability

According to the Department of Education's Office of Civil Rights, which enforces Title IX, and the Equal Employment Opportunity Commission, which enforces Title VII, sexual harassment is a form of sex discrimination prohibited by these statutes. The law regarding sexual harassment under Title VII has developed substantially more than the law under Title IX -- the landmark *Meritor Savings Bank v. Vinson* case was brought under Title VII. Nonetheless, under Title IX a covered institution may be held liable for the sexual harassment of students by faculty members, teaching assistants, administrators, or other employees. In addition, it may also be liable for the offending behavior of a supervisory employee or co-worker against another employee, for the sexual harassment of a faculty member by other faculty members or personnel or for the harassment of teachers, other personnel or students by students. However, in an area such as sexual harassment, where the law is not fully developed and a variety of federal and state laws may apply, complainants should consult with legal counsel to fully explore available legal remedies and avenues for redress.

Grievance Procedures and Campus Programs on Sexual Harassment

The most effective means by which covered institutions may address these problems and promote a positive learning environment is to institute a grievance procedure which specifically addresses sexual harassment. Further, they should institute a comprehensive campus program to educate students, faculty and staff as to what sexual harassment is, its illegal nature, and where and how complaints may be processed. Failure to have such a procedure in place and a specific person designated to handle such complaints is a violation of Title IX.

More specifically, a covered institution should:

1. Develop a strong policy statement identifying and prohibiting sexual harassment. Such a policy will be more effective if endorsed by a faculty governing body.

2. Employ procedures for processing complaints which provide for confidentiality, protection against retaliatory actions, and prompt resolution.

3. Provide a mechanism which allows the sexual harassment complainant to avoid the immediate supervisor who may be the offending individual.

4. Permit the complainant to appear with a friend or advisor at any stage of the proceedings for moral support.

5. Set standards which provide for disciplinary action of faculty members, employees and students who violate their legal and ethical responsibilities.

6. Publicize all components of the program and integrate this publicity with personnel, student, and faculty orientation materials.

STUDENT SERVICES

Title IX explicitly prohibits gender discrimination in the provision of student services. Without equal access to such services and benefits, the ability of young women to excel and achieve their fullest potential in the academic environment would be severely hampered. Some specific programs which are covered include:

- o counseling and testing
- o awards and financial assistance
- o employment assistance
- o housing
- o programs for pregnant students

Counseling and Testing

Under Title IX, different counseling or testing materials for males and females may not be used unless the different materials cover the same occupations and interest areas for both sexes and the purpose of such material is to eliminate sex bias. This policy includes materials which may not be overtly discriminatory, but which have the effect of segregating and concentrating males and females into different occupations. If such effect occurs, the institution is obligated to assure itself that the imbalance is not the result of sex discrimination.

An example of a violation is the practice of one vocational career counseling center which gave females pink sheets directing them toward traditionally female occupations such as secretary or nurse, and gave males blue sheets directing them toward science and medicine.

Financial Assistance

Under Title IX, institutions may not require different eligibility standards for males and females in order to qualify for financial aid. They may not list or solicit funds which are restricted to either males or females. Neither may they treat married or single men differently from similarly situated women or treat pregnant women differently from men in terms of eligibility for financial assistance.

Institutions may continue to make awards under special trusts or bequests which do designate a specific sex. However, they may do so only if the overall effect of the distribution of these restricted awards does not discriminate on the basis of sex. That is, unrestricted funds must be used to compensate for inequities which result. See the section on Title IX and Sports for a specific discussion of athletic scholarships.

Employment Assistance

The placement office, work-study program, apprenticeship program, or cooperative education program may not list or restrict jobs to one sex. In addition, such programs may not make a placement in any setting which discriminates on the basis of sex.

Housing

Title IX permits separate housing for men and women. However, such housing may not require different standards, fees, and policies for men and women and the cost and availability must be comparable. Women should not find themselves in situations where they do not have the same housing options as men in terms of cost, type of housing, and availability. These requirements apply to both on-campus housing and housing which the university assists the student in locating.

TITLE IX IN VOCATIONAL EDUCATION

Virtually all high school students, whether they expect to go directly to work or first to college and then to work, take some vocational education classes, according to the First Interim Report from the National Assessment of Vocational Education (January 1988). The data on students who were high school sophomores in 1982 -- the most recent available -- shows that while male and female students enroll in the same number of vocationally-oriented courses, the content of these courses is often very different. Trade and industrial classes, which lead to higher paying jobs, are dominated by males. Females make up the vast majority of students enrolled in consumer and homemaking education (not designed to prepare the student for any career), business support, health, and occupational home economics. These young women are preparing for fields that employ mostly women, are historically low paying, and offer little opportunity for advancement.

The problem in post-secondary education is also severe. The many vocational and technical educational programs offered at the junior and community college level are extremely sex-segregated along the same traditional lines. For example, in 1985-86, nearly one quarter of all associate degrees granted to women were in health sciences and nearly 10% were in secretarial programs while the corresponding numbers for men were 4% and less than 1%. At the same time, over 25% of associate degrees granted to men were in engineering technologies (mechanics, construction trades, etc.) while only 2% of women pursued such a course of study.

While there have been some gains for women in non-traditional areas of vocational education, the overall pattern of sex segregated enrollments has changed relatively little over the years. Title IX's provisions prohibiting sex discrimination provide a valuable tool for working toward equity in vocational education programs.

Any vocational program which receives federal funding or is part of an institution or system of education which receives such funding is covered under Title IX. Included are programs operated by public school systems, colleges and universities, including junior and community colleges, independent vocational education institutions and proprietary schools as well as programs in non-educational institutions such as correctional departments, health care institutions, unions, or businesses of any type.

Further, Title IX's prohibitions apply regardless of whether the program or activity at issue is sponsored by the federally funded institution alone or is sponsored jointly with an outside private organization. Indeed, Title IX requires that any covered institution must assure itself that any outside agency, business organization, or individual with which it cooperates does not discriminate against its students on the basis of sex, whether in cooperative education, work-study programs, apprenticeships or job placement. If the outside party refuses to give that assurance -- or gives it but continues to discriminate -- the school is required to end its cooperation with that agency, organization or individual. This provision encourages educators to find and support outside employment situations that offer nondiscriminatory apprenticeship training, summer employment, or work/study opportunities to their students.

Schools may neither require nor refuse participation in a course to their students on the basis of sex, including vocational and technical education, home economics, industrial and business education. If the school finds that the enrollment in a particular course or activity is comprised disproportionately of members of one gender, the school must investigate to make sure the disproportionate enrollment is not the result of discrimination on the basis of sex in counseling or content of materials used by counselors or others which discourage the underrepresented gender from participating. Counseling materials, which are precluded from sex bias, include not only tests but also pamphlets, books and other materials on careers, occupations, and course descriptions. In addition, it is important to keep in mind that vocational programs often have special promotional materials for prospective students and their parents which go beyond course descriptions and address opportunities in different occupations and the benefits of vocational education in general. These are particularly key materials because they may be the students' and the parents' first introduction to the possibilities offered by vocational education. Title IX requires that they be free of sex bias.

Vocational high schools which were historically single sex often tend to continue to enroll predominantly male or predominantly female students. When this is the case, the school is responsible for taking steps to attract students of the minority gender to more closely balance the school's enrollment. Measures most often involve rewriting course descriptions and designing promotional materials to appeal to students of both sexes.

Sexual harassment can be a particular problem in vocational classes and institutions, especially where segregation is severe, where there is one girl in a class of boys or a few girls in a school where predominantly boys are enrolled. (For more information see the section on sexual harassment.)

TITLE IX ENFORCEMENT

Title IX's purpose is to assure that federal funds do not subsidize sex discrimination in education. Title IX thus provides that if a covered institution discriminates on the basis of sex, the government may terminate its federal funding. However, the government has avoided applying this extreme remedy; to date, no federal funds have ever been terminated under Title IX.

Nonetheless, Title IX offers a valuable enforcement scheme to help victims of discrimination. Educational institutions are required to create their own internal mechanisms to comply with the law. Further, individuals may seek to secure their Title IX rights either through an administrative complaint with the federal government agency which has funded the institution in question or by filing a private lawsuit.

Obligations of Educational Institutions

The initial obligation to comply with Title IX rests directly with the entities that receive federal funds. Each covered institution must inform applicants for admission and employment, as well as students, their parents and all staff of its nondiscrimination policy under Title IX. Further, a statement of this policy must be included in all announcements, bulletins, catalogs and application forms going to each such person. Each school must appoint at least one employee to coordinate compliance efforts and to investigate complaints. They must also adopt an internal grievance procedure for processing Title IX complaints. And, finally, students and employees must be notified of these procedures as well as the identity, office address and telephone number of the person(s) responsible for the investigations.

Administrative Complaints

While institutions must develop these internal procedures, victims of sex discrimination are not required to use them. Instead, complaints of discrimination may be filed with the Department of Education's Office for Civil Rights[3]. A list of its regional offices is attached as Appendix A. A complaint must be in writing, clearly state that it is a complaint, and be filed no later than 180 days after the alleged discrimination (or the termination of an ongoing practice of discrimination), unless an extension of time is explicitly granted. When filing an administrative complaint, the actual victim of discrimination need not file herself -- any interested person or organization can file on her behalf. Finally, the law prohibits retaliation against individuals who file or who are the subject of Title IX complaints. Retaliation, if it occurs, gives rise to a separate Title IX violation.

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[3] All federal agencies which fund educational programs or activities have enforcement responsibilities under Title IX and a complaint may be filed with any one of them which has provided funds to the educational institution in question. However, the Department of Education has been the lead agency in enforcing the statute.

Currently, the Department of Education (ED) is following procedures which require it to investigate and process complaints promptly.[4] In most cases, the complaint must be acknowledged within 15 days and an investigation concluded and a "letter of finding" as to whether there has been discrimination issued after another 90 days. During the investigation, the complainant must be notified in advance of proposed adverse findings and be given an opportunity to rebut them. In cases where there has been a finding of discrimination, ED may take another 90 days to seek to "conciliate" -- or negotiate -- an agreement with the offending educational institution. ED is required to consult with the complainant during these negotiations. If a conciliation agreement cannot be reached, ED is to refer the case for enforcement either within ED or to the Department of Justice. Actual government enforcement actions are rare.

Compliance Reviews

In addition to processing complaints, ED also conducts periodic compliance reviews of schools. ED goes into schools on its own initiative and investigates whether they are complying with the requirements of Title IX. If they are not, a procedure similar to that outlined above for individual complaints goes into effect.

Litigation

A victim of sex discrimination can also file a Title IX claim directly in court. If you are interested in pursuing litigation, we suggest that you consult with legal counsel to fully explore your options. Issues to consider include, by way of example, positions which ED has taken previously on similar complaints, the likelihood that the educational institution involved will seek to resolve in good faith the particular complaint, the availability of legal counsel, and the expense of litigation.

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[4] These procedures, often referred to as "timeframes", were instituted as the result of two lawsuits, *Adams v. Bennett* and *WEAL v. Bennett.* These lawsuits have been dismissed by the federal district court but are under appeal. The Department of Education has publicly stated that it will continue to follow the timeframes. Depending on the outcome of the appeals, the timeframes may be reinstated as legally binding rules.

AFFIRMATIVE ACTION

Title IX recognizes that in order to treat the sexes equally over the long term, they must sometimes be treated differently over the short term. The regulations specifically authorize the following:

- Upon a finding of discrimination, either the agency or a court may order remedial action to overcome the effects of such discrimination;
- Even in the absence of such a finding, a covered institution may take affirmative action to overcome the effects of conditions which have resulted in limited participation by members of one sex.

CONCLUSION

Title IX offers broad and valuable protections for victims of sex discrimination in education. The National Coalition for Women and Girls in Education strongly encourages girls and women in education to become familiar with their Title IX rights and, as appropriate, to take the necessary steps to enforce them.

DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION I
Tom Burns
Regional Director
Office for Civil Rights, Region I
Department of Education
J.W. McCormick Post Office
and Courthouse, Room 222
Boston, MA 02109
617/223-9662

REGION II
Paula Kuebler
Regional Director
Office for Civil Rights, Region II
Department of Education
26 Federal Plaza, 33rd Floor
New York, NY 10278
212/264-5180

REGION IIII
Dr. Robert A. Smallwood
Regional Director
Office for Civil Rights, Region III
Department of Education
Gateway Building, Room 6300
3535 Market Street
Philadelphia, PA 19101
215/596-6787

REGION IV
Jesse High
Regional Director
Office for Civil Rights, Region IV
Department of Education
PO Box 1705
Atlanta, GA 30301
404/221-2954

REGION V
Kenneth A. Mines
Regional Director
Office for Civil Rights, Region V
Department of Education
401 South State Street, 7th Floor
Chicago, IL 60605
312-886-3456

REGION VI
Taylor August
Regional Director
Office for Civil Rights, Region VI
Department of Education
Room 1935, 1200 Main Tower Building
Dallas, TX 75202
214/767-3959

REGION VII
Judith E. Banks
Acting Regional Director
Office for Civil Rights, Region VII
Department of Education
10220 North Executive Hills Blvd.
PO Box 901381
Kansas City, MO 64190-1381
816/891-8026

REGION VIII
Dr. Gilbert Roman
Regional Director
Office for Civil Rights, Region VIII
Department of Education
Federal Office Building
1961 Stout Street, Room 1185
Denver, CO 80294
303/837-5695

REGION IX
John Palomino
Acting Regional Director
Office for Civil Rights, Region IX
Department of Education
221 Main Street, 10th Floor
San Francisco, CA 94103
415/227-8042

REGION X
Gary Jackson
Regional Director
Office for Civil Rights, Region X
Department of Education
915 Second Avenue
Seattle, WA 98174-1099
206/399-1635

HEADQUARTERS
Department of Education
Office for Civil Rights
330 C Street, SW
Washington, DC 20202
202/732-1213